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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1352 OF 2007
IN
SUIT NO.1102 OF 1991

S.Parekh & Co. and another — Plaintiffs
versus
The Life Insurance Corpn.
of India and others — Defendants

WITH
NOTICE NO.560 OF 2007
IN
SUIT NO.1102 OF 1991

S.Parekh & Co. and another — Plaintiffs
versus
The Life Insurance Corpn.
of India and others — Defendants

Mr.Virendra Tulzapurkar, Sr.Adv. i/by Mr.Ajay Panickar for plaintiffs.

Mr.V.Y.Sanglikar for defendant no.1.

Mr.S.H.Doctor, Sr.Adv. i/by Mr.Shekhar Shetye for defendant nos.3 to 7.

CORAM : A.M.KHANWILKAR, J.

DATE : 22nd August 2007

PC :

1. Heard counsel for the parties. By consent, motion is taken up for final hearing. Perused the pleadings and documents on record.

MST

2. By this motion the defendant no.1 prays that an ex-parte decree passed in Suit No.1102 of 1991 dated 12th March 1997 be set aside the the suit be restored to the file on its original number in accordance with law. The cause given in the affidavit-of-support of the motion is that the defendant no.1 became aware of the ex-parte decree only on 21st June 2005 on receipt of letter sent by their advocate forwarding certified copy of the decree. The application then proceeds to give the details as to what steps were taken by the defendant no.1 and their officers after receipt of letter dated 9th November 2005. In the first place, there is no explanation offered as to what steps were taken by the defendant no.1 and its officers even after receipt of letter dated 21st June 2005 from the advocate forwarding the certified copy of the subject decree till November 2005. The explanation offered is only for the subsequent period from November 2005 till filing of the present application.

3. The application, however, is opposed by the plaintiffs on more than one grounds. In the first place, it is asserted that the defendant

no.1 has not approached this Court with clean hands. The material fact that the defendant no.1 became aware of the disposal of the suit as early as in November 2003 has been suppressed by the defendant no.1.

4. Significantly, the defendant no.1 got knowledge about passing of the ex-parte decree when the written statement was filed by the plaintiffs in some other proceedings between the same parties in which that fact was disclosed. The said written statement was filed in September 2003, copy whereof was forwarded to the defendant no.1 by their advocates on 2nd December 2003. The fact that such intimation was received by defendant no.1 has now been conceded only in the rejoinder affidavit and that communication has been placed on record as Exhibit-1 to the rejoinder affidavit. The letter clearly records that the suit has been disposed of on 12th March 1997. The letter dated 2nd December 2003 clearly records that the suit has been disposed of on 12th March 1997. A xerox copy of the original letter which has been produced on record, also indicates that the officer of the defendant no.1 has made an endorsement on this letter on 9th December 2003 itself that the defendant no.1

MST

would like to know what is the nature of order passed in the context of communication received. No valid or tangible explanation is offered for non disclosure of this material fact in the original application. More over, the applicant is completely silent about what steps have been taken after December 2003 till November 2005. Thus understood, it is a case not only of no sufficient cause offered by the defendant no.1 atleast from December 2003 till November 2005, but also a case of suppression of material fact of knowledge acquired by the defendant no.1 of disposal of the suit as early as in December 2003.

5. In this context, counsel for the plaintiffs has rightly pressed into service the decision of the Apex Court in the case of Binod Bihari Singh Vs. Union of India reported in (1993)1-SCC-572. The exposition in the said decision applies on all fours to the fact situation of the present case, being a case of non disclosure of material fact and/or taking up of a false plea that the knowledge of the ex-parte decree was acquired only in June 2005 on account of letter dated 21st June 2005.

MST

6. Counsel for the plaintiffs has also relied on an unreported decision in the case of Punaji Tukaram Naik Vs. M/s.Gujarat Fluro Chemicals Ltd. and others in Notice of Motion No.353 of 2007 in Suit No.227 of 1992. However, that decision has no application because this is not a case under Order VIII, Rule 10 of CPC..

7. Counsel for the defendant nos.2 to 7 has relied on decision of the Apex court in the case of The State of West Bengal Vs. The Administrator, Howrah Municipality and others reported in AIR-1972-SC-749 to contend that merely because the party applying for condonation of delay is a Government Organisation, that cannot be the sole criteria to show indulgence to such party even if there is a case of negligence or inaction or want of bona fides. Counsel for defendant no.1, however, has relied on the decision of Apex Court in the case of N.Balakrishnan Vs. M.Krishnamurthy reported in AIR-1998-SC-3222 to contend that insofar as Government Organisations are concerned, a liberal attitude for condonation of delay ought to be observed. That decision, however, proceeds on the basis that sufficient cause for condonation of delay has been made out on behalf of the

applicant. In any case, for the finding that has been recorded in the earlier part of this order that the application as originally filed suppresses material fact about knowledge of the disposal of the suit acquired as back as in December 2003, no indulgence can be shown to the defendant no.1.

8. Counsel for defendant no.1 would argue that it is not a case of intentional delay and at best the Court may consider of imposing exemplary costs and show indulgence to the defendant no.1 as the property in question is a public property which will be disposed of on account of an ex-parte decree. This argument overlooks that in the fact situation of the present case, I have recorded a finding that the defendant no.1 has approached this Court with unclean hands by suppressing material fact. The inevitable result of such finding is to reject the application at the threshold.

9. Accordingly this Notice of Motion should fail and the same is dismissed.

10. At this stage the counsel for defendant no.1 submits that the defendant no.1 would like to

MST

carry the matter in appeal for which reason status-quo in relating to the execution of the decree with regard to the suit property be ordered at least for a short period. Although this prayer is opposed by the plaintiffs, in the interest of justice, it is directed that the decree be kept in abeyance for a period of four weeks from today.

(A.M.KHANWILKAR, J.)